

NOTICE OF EXEMPT RULEMAKING

TITLE 19, ALCOHOL, DOG AND HORSE RACING, LOTTERY AND GAMING

CHAPTER 2, ARIZONA RACING COMMISSION

PREAMBLE

1. **Article, Part or Section Affected (as applicable):** **Rulemaking Action:**

R19-2-205 Regulatory Wagering Assessment of Pari-Mutuel Pools Amend

2. **Citations to Agency's statutory rulemaking authority to include authorizing statute (general) and the implementing statute (specific) and the statute or session authorizing the exemption:**

Authorizing statute: A.R.S. § 5-104(A)(2), Laws 2011, Ch. 35 § 10(B)

Implementing statute: A.R.S. § 5-104(F), 5-104(R), 5-113.01, 5-230

Authorizing Exemption: Fifty First Legislature, Second Regular Session, 2014

Senate Bill 1487, Section 3. Racing and Boxing fees, Increase, Rulemaking Exemption:

A. The Arizona Department of Racing is exempt from the rulemaking requirements of Title 41, chapter 6, Arizona Revised Statutes, for the purpose of increasing fees pursuant to sections 5-104 and 5-230, Arizona Revised Statutes, until July 1, 2015.

3. **The effective date of the rule and the agency's reason it selected the effective date:**

Effective date: Upon filing with Secretary of State

From time to time, the Department of Racing reviews its major source of income, the Regulatory Wagering Assessment (RWA). In the latest review, a determination was made that income from this source would leave the agency with a shortfall of approximately \$486,000.00 at the end of this fiscal year, June 30, 2015. Due to the projected shortfall of revenues this fiscal year, the Department believes it is necessary to increase the RWA from 0.60% to 0.85% to help carry it through the remainder of fiscal year 2015 and into fiscal year 2016. This increase should be done as soon as is practicable to insure continued, effective, regulation of the racing industry as mandated by law.

A list of all notices published in the Register as specified in R1-1409(A) that pertain to the record of the exempt rulemaking:

None

4. The agency's contact person who can answer questions about the rulemaking:

Name: Rudy J. Casillas, Interim Director

Address: Arizona Department of Racing
1110 W. Washington, Suite 260
Phoenix, Arizona 85007

Telephone: (602) 364-1725

Fax: (602) 364-1703

Email: rcasillas@azracing.gov

Website: www.azracing.gov

5. As agency's justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:

Periodically, the Department of Racing reviews its major source of income, the Regulatory Wagering Assessment (RWA). In the latest review, a determination was made that income from this source would leave the agency with a shortfall of approximately \$486,000.00 at the end of this fiscal year, June 30, 2015. Due to the projected shortfall of revenues this fiscal year, the Department believes it is necessary to increase the RWA from 0.60% to 0.85% to help carry it through the remainder of fiscal year 2015 and into fiscal year 2016.

The current RWA assessment rate of 0.60% along with the other Department revenue streams for fiscal year 2015 is projected to generate \$2.4m in total revenues. However, Department expenditures are projected to total \$2.89m for the fiscal year. The Arizona Racing handle, upon which the RWA is based, has decreased by 14.7% this fiscal year to date and is projected to continue to drop by the same amount for the remainder of the year.

In order for the Department to meet its mission and goals of effectively regulating the racing industry, the RWA must be increased to 0.85 percent. In the event that the RWA is not increased to a sufficient level, the Department will be forced to implement a Reduction in Force (RIF) or furlough several Department employees through the remainder of the fiscal year to off-set the revenue shortfall. Additionally, the Department will be forced to limit travel, cut purchasing of office supplies and equipment. Department furloughs cause significant concerns as the industry would operate with very limited oversight by the Department. Significant administrative backlogs would develop in providing due process regarding licensee and permittee

infractions and in the conduct of hearings requested by appellants. Furthermore, the revenue shortfall places the Department at financial risk beginning fiscal year 2016, as the primary revenue inflow does not commence until November 2015.

The Department of Racing is initiating this exempt rulemaking to comply with the requirement that the Department collects fees in the amount necessary to support the Department's mission under the requirements of Laws 2011, Ch. 35. §10(B).

Additionally, On March 12, 2015, Governor Ducey signed SB1480 "Agency Consolidation: Budget Reconciliation 2015-2016" consolidating the Arizona Department of Racing (ADOR) into the Arizona Department of Gaming (ADG). This agency consolidation will take effect July 1, 2015. As a result of the budget constraints and the agency consolidation, ADOR has entered into an Interagency Service Agreement (ISA) with the Arizona Department of Gaming (ADG) in an effort to reduce costs and transition several administrative duties. The (ISA) will assist both agencies, ensuring a seamless transition and maintain a high level of customer service.

After the agency consolidation, the Division of Racing will continue to be funded by the racing industry and will continue to have its own stand-alone budget.

6. **A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

7. **A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

8. **The summary of the economic, small business, and consumer impact, if applicable:**

The economic impact of this rule amendment will have an effect on the Permittees holding racing meetings within the State of Arizona. The Regulatory Wagering Assessment percentage is taken from the pari-mutuel wagering pools of the tracks hosting race meetings. All monies wagered by patrons on horse, harness or dog races is computed in the amount of money wagered for each racing day, which this percentage increase will ultimately decrease the Permittees net profits. Conversely, the RWA percentage increase will provide the Arizona Department of Racing with additional revenues for the remainder of fiscal year 2015 and into fiscal year 2016 to regulate the racing industry.

9. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package if applicable:

None

10. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:

None

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not limited to:

- a. Whether the rule requires a permit, whether a general permit is used and if not, the reason why a general permit is not used:

No; no; not Applicable

- b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than the federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

No; not applicable; not applicable

- c. Whether a person, submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No

12. A list of any incorporated by reference material and its location in the rule:

None

13. Whether the rule was previously made, amended, repealed, or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:

Not applicable

14. The full text of the rule follows:

R19-2-205. Regulatory Wagering Assessment of Pari-Mutuel Pools

- A. (No change)
- B. The racing regulation assessment for each racing meeting on all in-state and/or out-of-state, on-track, off-track, live, import and/or export wagers and/or wager types shall be ~~0.60~~ 0.85 percent beginning _____, ~~2014~~2015.
- C. (No change)
- D. (No change)